

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DONALD FRANCIS,)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-80-B-H
)	
ROB ANGELO, ALLEN)	
WOOLLEY, and BUTCH)	
MOOR,)	
)	
Defendants)	

MEMORANDUM OF DECISION¹

This matter was tried before me at a Bench Trial on May 8, 2001. At the conclusion of the trial I made oral findings on the record and directed the clerk to enter judgment for the defendants. I now supplement those oral findings with the following findings of fact and conclusions of law.

Findings of Fact

The facts leading up to the apprehension of Plaintiff Donald Francis are essentially undisputed. The parties entered into a detailed stipulation of fact concerning both background information and information relating to the events which ultimately resulted in the high speed chase and motor vehicle accident on outer Broadway in Bangor on November 25, 1999. Those undisputed facts are recited in detail in my prior Memorandum of Decision relating to the summary judgment order in this case. I will not repeat them here, but rather I will address only the disputed facts surrounding the actual

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

apprehension of Francis. Four individuals described those events² and each account differed to some degree. Based upon the evidence, I have made the following pertinent factual findings.

When Donald Francis lost control of his vehicle and found himself firmly lodged in a roadside ditch, he fled from the automobile and ran up a steep, grassy hillside adjacent to outer Broadway. Bangor Police Officer Rob Angelo gave pursuit on foot and caught up with Francis at the crest of the hill. Francis is taller and heavier than Angelo and the size difference was aggravated by the fact the Francis was uphill from Angelo. Angelo grabbed Francis by the belt and managed to turn him around, pulling his long hair in the process. The two men were in close proximity and Francis was swearing, hollering, and trying to bite Angelo. Angelo forcefully pushed Francis in the face to get him away and to protect himself. The officer somehow managed to bring Francis to the ground, face down, and proceeded to try to get on top of him.

A struggle ensued on the ground, with Angelo on top and Francis trying to get up and get away. He refused to present his hands to be handcuffed and kept them under his body. Angelo pushed Francis's head into the ground repeatedly trying to get him to submit to arrest. It is most probable that Francis's nose was broken either during this portion of the encounter or earlier when Angelo pushed him in the face. In any event the struggle between Francis and Angelo continued for a brief period, probably no longer than one minute, during which time Angelo hollered to the officers who had arrived at the

² A fifth person, Officer James Hassard, was also present and witnessed the encounter. Hassard's name was not disclosed in response to Francis's discovery request and although his name was furnished in the pretrial filings, it was misspelled and he was not identified as an eyewitness to the encounter. On Francis's request Hassard was excluded as a witness at trial.

scene below to try to obtain their assistance. Angelo was having a difficult time restraining Francis and there was a possibility that he might escape.

Officers Woolley and Moore responded to Angelo's cries, Woolley arriving at the scene slightly ahead of Moore. Woolley determined that he should use additional physical force to try to stun Francis and thus obtain his compliance. He elected to execute a maneuver that is best described as "sliding into home plate" on his knees with his flashlight held by the lens and used as an impact weapon. Woolley's aim was to stun Francis in the right shoulder muscle area, in accordance with police procedures involving use of impact weapons on soft tissue masses. Sadly Woolley's efforts went a little awry. It was dark and Angelo and Francis were struggling on the ground. It is conceded by the officers that Woolley's flashlight apparently struck Angelo in the elbow. It then flew from his hand and was not recovered until after the melee ended. I also found from the weight of the evidence that it is more probable than not that the flashlight struck the right side of Francis's head causing a four-centimeter laceration which required six staples.³

Moore arrived at the scene at about this time and observed Angelo fall off Francis's back, holding his arm in obvious pain. Moore's first thought was that a knife might be involved and Angelo might have been stabbed. By this point in time it is unclear whether Francis was in any condition to comply with directives, but to an objective observer it appeared that he was still trying to get up and get away. Moore jumped on top of him and administered punches to his back and kidneys while Woolley continued working from the right side to free Francis's arms for handcuffing. After a few seconds Francis begged the officers to stop hitting him and submitted to the handcuffs.

³ I conclude that the flashlight made contact with Francis's head either in a misguided swing by Woolley or as it flew from his grasp.

The officers stopped their assault and no gratuitous blows were inflicted once Francis had been subdued. Francis was removed from the scene by ambulance attendants and taken to Eastern Maine Medical Center where he was treated and released to the Penobscot County Jail.

Conclusions of Law

The Supreme Court has made clear that claims like Francis's fall within the ambit of the Fourth Amendment:

Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons ... against unreasonable ... seizures" of the person.

Graham v. Connor, 490 U.S. 386, 394 (1989); see also id. at 395 (concluding that the "more generalized notion of 'substantive due process'" does not apply to claims of this ilk); accord Comfort v. Town of Pittsfield, 924 F. Supp 1219, 1228 (D. Me. 1996) ("The Fourth Amendment protects against the use of excessive force by police officers in carrying out an arrest.")

The Fourth Amendment inquiry announced in Graham is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivations." 490 U.S. at 397 (observing that evil or good intentions of the arresting officer do not enter into the "objectively reasonable" equation). Accord Napier v. Windham, 187 F.3d 177, 182-83 (1st Cir. 1999).

This inquiry requires "a careful balancing," examining the type and extent of the alleged infringement of Francis's Fourth Amendment right on one hand and the

governmental interests at stake on the other, with “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” Graham, 490 U.S. at 396 –97. The Graham standard is “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” Roy v. Lewiston, 42 F.3d 691, 695 (1st Cir. 1994). Analyzing whether excessive force was used requires “careful attention to the facts and circumstance of [this] case, including the severity of the crime at issue, whether [Francis] pose[d] an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” Graham, 490 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)).

Applying this Graham standard to Angelo and Woolley’s actions, I am satisfied that their conduct was objectively reasonable under the circumstances they faced. Francis would not voluntarily submit to arrest, he tried to flee the scene, there was a real potential that weapons could be involved, and there had been serious criminal conduct culminating in a severe motor vehicle accident involving innocent citizens.

Conclusion

Based upon the foregoing, judgment is entered for the defendants.

So Ordered.

Dated: May 11, 2001.

Margaret J. Kravchuk
U.S. Magistrate Judge

CLOSED PR1983

U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 00-CV-80

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